92-1311

Case No. _____

Supreme Court, U.S.
FILED
DEC 28 1993
OFFICE OF THE CLERK

In The Supreme Court Of The United States

October Term 1992

RONALD L. BRANSON,

Petitioner,

vs.

CITY OF LOS ANGELES; COUNTY OF LOS ANGELES; ANTHONY R. STAVROPOULOS; PATRICK SHANNON; SGT. ROGER W. FERGUSON; SGT. JOSEPH MORGAN; DET. LARRY R. DOLLEY; CRAIG J. STRAUCH, an individual; SHERMAN BLOCK, Los Angeles County Sheriff; JAMES PEREZ, Deputy Sheriff; PATRICIA G. SCHWARTZ, Commissioner of the Los Angeles Municipal Court,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RONALD L. BRANSON
Petitioner, Pro Se
10853 White Oak Avenue
Granada Hills CA 91344
Msg.phone (818)446-8356

Dec. 26, 1992
(Resubmitted)

54 pp

QUESTION PRESENTED FOR REVIEW
(Certiorari)

Whether the Ninth Circuit Court of Appeals lacked jurisdiction and discretion to act under Title 28 U.S.C. §1291 and F.R.A.P. Rule 4(a)(1) in USCA Case No. 91-55819, by ignoring the requirements of "finality" under §1291 within the meaning of Budinich (cited in Argument); by ignoring the Usurpation of Power issue which has ***never been addressed;*** by ignoring the requirements of Title 28 U.S.C. §2107 and Rule 4(a)(6) F.R.A.P., and Rules 58 and 79(a) F.R.Cv.P.; and by ignoring Rule 4(a)(4) F.R.A.P. and the pending Rule 59(e) motions which were never identified as "motions for reconsideration" in the record.

* * *

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Reference to Official/Unofficial Reports	1
Grounds for Jurisdiction	1
Title 28 U.S.C. §2403(a) Applicable	1
Constitutional Provisions & Statutes Involved	2
Statement of the Case	2
Argument (Re Jurisdiction of Ct of Appeal)	7
Conclusion	17
Appendix	

* * *

TABLE OF AUTHORITIES

Cases:	Pages
Acosta v. Louisiana Dept.of H&H Res. (1986) 478 U.S. 251, 106 S.Ct 2876	13,14
Alman v. Taunton Sportswear Mfg. Corp. (1st Cir.1988) 857 F.2d 840	14
Bankers Trust Co. v. Mallis (1978) 435 U.S. 381	15
Budinich v. Becton Dickinson & Co. (1988) 486 U.S. 196	9,10
Calhoun v. United States (9th Cir.1981) 647 F.2d 6	13,14

Catlin v. United States (1945) 9,10
324 U.S. 229

Ex parte United States (1932) 17
287 U.S. 241, 53 S.Ct. 129

Firestone Tire & Rubber Co. v. 10
Risjord (1981) 449 U.S. 368

FW/PBS, Inc. v. Dallas (1990) 8
493 U.S. 215, 110 S.Ct 596

Grace v. American Central Ins. Co. 13
(1883) 109 U.S. 278, 3 S.Ct 207

Griggs v. Provident Consumer Discount 11
Co. (1982) 459 U.S. 56, 103 S.Ct 400

Gulfstream Aerospace Corp. v. 9
Mayacamas Corp. (1988) 485 U.S. 271

Hollywood v. City of Santa Maria 14
(9th Cir.1989) 886 F.2d 1228

Liberty Mutual Ins. Co. v. Wetzel 8
(1976) 424 U.S. 737

M.C. & L.M. Railway Co. v. Swan 7
(1884) 111 U.S. 379

Osterneck v. Ernst & Whinney (1989) 9,10
489 U.S. 169

United States v. Indrelunas (1973) 15
411 U.S. 216

U.S. ex rel Pippin v. J.R. Youngdale 11
Const. (9th Cir.1991) 923 F.2d 146

Walling v. Reuter Co. (1944) 8
321 U.S. 671, 64 S.Ct 826, 88 L.Ed 1001

Young Properties Corp. v. United Equity Corp.(9th Cir.1976) 534 F.2d 847 — 13

Federal Statutes:

28 U.S.C. § 636(b)(1) — 16
28 U.S.C. §1254(1) — 7
28 U.S.C. §1291 — 7,9,10,15,16
28 U.S.C. §1331 — 16
28 U.S.C. 1343(a)(3) — 16
28 U.S.C. §2106 — 8
28 U.S.C. §2403(a) — 1
42 U.S.C. §1983 — 16,17

Federal Rules of Appellate Procedure:

Rule 4(a)(1) — 7,9,16
Rule 4(a)(4) — 9,10,13,14

Federal Rules of Civil Procedure:

Rule 58 — 14,15
Rule 59(e) — 9,10,11,12,13,14,15
Rule 72(b) — 16
Rule 79(a) — 13,14

Moore's Federal Practice:

Vol. 9 2d, §204.12[1] (1992) — 10
Vol.12 2d, §433.01[2] (1990) — 7
Vol.12 2d, §434.01 — 7
Vol.12 2d, §607.07[2] — 8

Wright,Miller & Cooper, Fed. Prac.:

Vol.13A, Juris.2d §3536 — 9
Vol.16, §3950 (1982 Supp) — 11
Vol.17, Juris.2d §4036 — 7

* * *

REFERENCE TO OFFICIAL/UNOFFICIAL REPORTS OF OPINIONS

United States Reports
Supreme Court Reporter
Lawyers' Edition Reports, 1st & 2d Series
Federal Reporter, 2d Series

GROUNDS FOR JURISDICTION

(1) The final opinion sought to be reviewed was filed August 6, 1992; rehearing was denied September 28, 1992

(2) The statutory provision which confers jurisdiction on this Court to review the final opinion in question by writ of certiorari, insofar as the jurisdiction of the Court of Appeals is questioned, is Title 28 U.S.C. §1254(1); the merits are not reached. In addition thereto, petitioner invokes Title 28 U.S.C. §1651 (see Petition for Writ of Mandamus filed concurrently herewith under separate cover) which confers on this Court further jurisdiction in aid of its appellate jurisdiction to issue a writ of mandamus or common law certiorari regarding the Usurpation of Power question presented in that petition. [Texts in Appendix].

TITLE 28 USC §2403(a) APPLICABLE

The constitutionality of several Acts of Congress has been drawn into question and therefore Title 28 U.S.C. §2403(a) is applicable; this Petition is served upon the Solicitor General, Department of Justice, Washington D.C. 20530.

The Ninth Circuit Court of Appeals was noticed in writing of the constitutional questions on 6/17/89 in USCA No. 89-55306, on 2/11/91 in USCA No. 91-70099, and on 11/6/91 in USCA No. 91-55819, for the purpose of certifying that fact to the Attorney General, pursuant to FRAP Rule 44.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions:
Fourth Amendment, U.S. Constitution
Fifth Amendment, U.S. Constitution
Fourteenth Amendment, U.S. Constitution
Federal Statutes:
28 U.S.C. § 636(b)(1)
28 U.S.C. §1254(1)
28 U.S.C. §1291
28 U.S.C. §1331
28 U.S.C. §1343(a)(3)
28 U.S.C. §1651(a)
28 U.S.C. §2106
28 U.S.C. §2107
28 U.S.C. §2403(a)
42 U.S.C. §1983
[Pertinent texts are set forth in the Appendix]

STATEMENT OF THE CASE

Petitioner herein is often referred to as "plaintiff".

The following facts are material to the question presented. Since the issues are jurisdictional, discussion of merits is not relevant; merits are not reached. This statement deals primarily with mechanics, involving Rule 59(e) motions and facts involving usurpation of power by the district court and refusal of any court to address that issue.

The nature of USDC Case No. 87-03003-WDK is an action at law to redress deprivations, under color of statute, ordinance, regulation, custom or usage, of rights, privileges, and immunities secured to plaintiff by the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, pursuant to Title 42 U.S.C. §1983, invoking the court's jurisdiction under Title 28 U.S.C. §1331 (federal-question) and §1343(a)(3) (civil rights violations).

The initial complaint was filed 5/8/87, and due to court-claimed ambiguities appearing on the face of the complaint possibly involving Parratt

violations, the court ordered plaintiff to amend. In compliance, plaintiff filed a First Amended Complaint (hereinafter "FAC") on 2/16/88 [CR 41] invoking the same jurisdiction. (Parenthetically, it is noted here that this first amendment was filed *on order of the court* and ***NOT*** by request of plaintiff [see CR 41 pp 1-2], and prior to the commencement of any discovery, which renders the statement made by the Court of Appeals in its decision regarding the "final two factors" of the Allen case as applied to the case at bar a complete fallacy and blatantly deceptive according to the record. [Decision p.4]. Those factors have *no application* here.)

All defendants answered [CR 45], [CR 48], [CR 72], except SCHWARTZ who moved for dismissal on the sole ground of "judicial immunity" [CR 44]. The magistrate recommended dismissal while expressly declining to rule on the issue of subject-matter jurisdiction of the municipal court (i.e., SCHWARTZ' court) in plaintiff's underlying criminal case and, hence, of defendant SCHWARTZ' authority to act therein [CR 85/p.5 fn.1]. Plaintiff filed Objections [CR 86], the magistrate reaffirmed his recommendation [CR 96] and the judge "adopted" it [CR 95] without evidence shown on the record of a *de novo* determination by the judge of plaintiff's Objections, although a proforma statement that such was done was made as a matter of form on the document. None of the Objections was addressed by the court, particularly regarding subject-matter jurisdiction of SCHWARTZ to act in the case at all, with reference to granting judicial immunity. Plaintiff filed a Rule 59(e) motion to alter or amend the judgment [CR 100]. The judge, rather than hear the 59(e) motion, transferred it "for all proceedings" back to the same magistrate [CR 101] whose decision plaintiff was challenging. Not surprisingly, the magistrate recommended the motion challenging his own decision be summarily denied without discussion of merits. The judge then "rubber-stamped" that recommendation refusing to address its merits which requested that the

judge specifically address plaintiff's previous Objections. This summary denial placed plaintiff back in "Square One" --where he was when he filed the Rule 59(e) motion attacking the decision.

Plaintiff filed an immediate appeal 5/12/89 [USCA No. 89-55306] on the denial of the Rule 59(e) motion. (Notice of that appeal filed 3/20/89 [CR 107]). Plaintiff also brought the issue of "judicial immunity" on appeal since the questions were closely related and sufficiently separate from the rest of the case to warrant immediate relief. However, rather than address the ***appealable issue*** for abuse of discretion on the 59(e) motion, the Court of Appeals (hereinafter "C/A") dismissed the entire appeal 8/23/90 based on non-appealability of the judicial-immunity issue. Plaintiff then filed a petition for rehearing 9/5/90, eliminating the judicial-immunity issue, requesting a ruling on the appealable issue re denial of the Rule 59(e) motion. Rehearing was denied 9/28/90. Again plaintiff was thrown back to "Square One" --the exact same position as when filing the Rule 59(e) motion.

The question of "judicial immunity" then became part of the "usurpation of power" issue, since it avoided the federal question presented. Since 9/13/88 the court, [Mag.Stone in particular], has refused to address the question of the lack of jurisdiction of the municipal court in the underlying criminal proceeding, which requires judicial examination into the ***federal question(s)*** presented.

The Second and Third Judgments are the result of motions for summary judgment for the COUNTY defendants and defendant STRAUCH, respectively, both decisions avoiding the federal question [CR 256, 261] the judge refusing to address that jurisdictional issue raised in plaintiff's Objections [CR 241]. Plaintiff filed a second Rule 59(e) motion [CR 263] with two volumes of supporting exhibits [CR 264, 265] challenging both of those judgments as void due to the court's failure to address the federal question(s) resulting in the court's usurpation of power. Instead of hearing the motion, the judge took it off calendar

and scheduled a status conference for 5/7/90 and ordered that the motion would be rescheduled by the court after the status conference [CR 272]. The motion was never rescheduled, leaving the finality of the Second and Third Judgments forever suspended and nonappealable to this day.

On 9/6/89 plaintiff filed a motion to amend the FAC [CR 150] lodging a proposed Second Amended Complaint ("SAC") to conform to evidence received from discovery, all of which took place after the filing of the FAC; this was plaintiff's *first request* to amend, the previous amendment being made in compliance with court order. New names were discovered and facts creating a new Fifth Cause of Action which directly alleges "There was no subject matter jurisdiction to file any misdemeanor complaint against plaintiff with said Municipal Court whatsoever..." [CR 406/59:12-15]. It is emphasized that the new Fifth Cause of Action consists of allegations based on evidence received through discovery ***since the filing of the FAC***, including discovery of the new names which were added to the FAC, rendering the C/A decision regarding application of the Allen case patently false [Decision p.4], although its truth or falsity is not determinative of the immediate jurisdictional issue.

The magistrate thereafter denied the motion 1/5/90 [not on docket], rendering all discovery vain. Plaintiff filed objections 1/22/90 [CR 242] and on 2/22/90 the judge ordered plaintiff [CR 262] to file a declaration attesting his genuine ignorance of the new names under the California standard set in Munoz v. Purdy (a state case). Without waiving his rights under Rule 15(a) F.R.Cv.P., plaintiff filed a declaration 3/16/90 [CR 266]. On 6/22/90 the judge denied leave to expand or modify claims, without explanation [CR 287]; i.e., the new cause of action could not be alleged. On 7/9/90 plaintiff filed a third Rule 59(e) motion, requesting the court to alter or amend and vacate as void the 6/22 Order [CR 288]. No opposition was filed, and on 7/31/90 the judge took the third

motion off calendar and submitted it 8/6/90. [CR 289]. The motion was thereafter ***never decided.***

Nothing more happened until a hearing scheduled for plaintiff's discovery motion was held 12/10/90 at which time the proposed SAC came up. The judge ordered the COUNTY to "file a Status Report re plaintiff's motion to file 2nd Amended Complaint" [CR 304]. On 12/20/90 counsel prepared a "Status Report" addressing the SAC on pp 3-4, the conclusion of which states "The confusion now lies in whether the court actually denied plaintiff's Motion to Vacate the Court's Ruling." [CR 307]. Plaintiff's discovery motion wasn't addressed.

The resulting 12/10/90 order [CR 304] forced plaintiff to seek extraordinary relief by supervisory mandamus on 2/15/91 [USCA No. 91-70099] which presented the issue of Usurpation of Power, requesting a stay until the case could be "set on track" on the federal jurisdiction invoked. The C/A denied the petition 3/13/91. Plaintiff was then forced to undergo sham proceedings that are fully documented on the record as sham, the court still proceeding outside the scope of federal jurisdiction, avoiding the alleged federal violations following plaintiff's warrantless felony arrest.

Thereafter plaintiff, for lack of a remedy by Writ, appealed the same issues as was brought up before the C/A previously in USCA No. 91-70099.

The threshold issue now is lack of jurisdiction of the C/A under §1291 and Rule 4(a)(1) F.R.A.P. in Case No. 91-55819. Petitioner presented this issue to the C/A in a petition for rehearing (hereinafter "REH"). Rehearing was denied without comment and the issue now comes before this Court.

In aid of this Court's appellate jurisdiction petitioner also files concurrently herewith under separate cover a Petition for Writ of Mandamus regarding the question of Usurpation of Power by the District Court which the C/A has failed to address.

ARGUMENT

The Court of Appeals lacked jurisdiction and discretion to act under Title 28 U.S.C. §1291 and FRAP Rule 4(a)(1) in Case No. 91-55819.

"[T]he first and fundamental question is that of jurisdiction, first, of this Court, and then of the court from which the record comes." M.C. & L.M. Railway Co. v. Swan (1884) 111 U.S. 379, 382.

The major mode for Supreme Court review of judgments rendered by the courts of appeals is by certiorari under §1254(1). If the case is in the court of appeals, §1254 gives the Court discretion to review the case by writ of certiorari, upon the petition of any party, in any civil or criminal case, before or after rendition of judgment or decree. (12 Moore's Fed. Prac.2d (1990) §433.01[1] p.6-38). Generally, a case is "in" the court of appeals when it has been docketed in that court. (*Idem*).

Beyond that starting point, there is no requirement that there be a "final" decision; once a case has come to be in a court of appeals, the Supreme Court may grant certiorari to review interlocutory decisions or procedural rulings.... (17 Wright,Miller & Cooper, Fed. Prac. & Proc., Juris.2d §4036 pp 10-11). Certiorari [under §1254] may be granted to review decisions that do not dispose of the pending litigation, to examine orders that go merely to procedural steps before the court of appeals, or to decide a case that has not even been considered by the court of appeals. (*Ibid.* p.19).

This Court has sufficient jurisdiction under §1254(1) to decide whether or not the court of appeals lacked jurisdiction over the case initially, in which case this Court has no jurisdiction to review the merits.... (12 Moore's Fed. Prac. 2d (1990) §433.01[2] p.6-39). "Finality" of an order or judgment is not a prerequisite to petitioning the Supreme Court for a writ of certiorari under §1254(1).... Upon reviewing a judgment of the court of appeals, the Supreme Court may reach back into the proceeding in the lower court.... (*Op.cit.* §434.01 pp 6-42, 6-43).

Jurisdiction herein is limited to the Court's supervisory appellate power. "It is a familiar practice of this Court that where for any reason the Court may not properly proceed with a case brought to it on appeal, or where for any reason it is without power to proceed with the appeal, it may nevertheless, in the exercise of its supervisory appellate power, make such disposition of the case as justice requires." Walling v. Reuter Co. (1944) 321 U.S. 671, 676, 64 S.Ct. 826, 88 L.Ed 1001.

"Section 2106 [Title 28 U.S.C.] further authorizes the Court to remand the case to the lower court with directions to enter the proper judgment, decree, or order. Alternatively, the Court may remand the case to a lower court for such further proceedings as the Court deems just under the circumstances." (12 Moore's Fed. Prac. (supra) §607.07[2] p.9-51). "Section 2106 also empowers the Court to reverse a lower court's judgment and this 'means to overthrow it by a contrary decision, to make it void, to undo or annul it for error.' (citation)." (*Ibid.* p.9-52).

This Court has an ***obligation*** to determine the jurisdictional question raised: "We are obligated to determine the jurisdiction of the Court of Appeals to entertain the appeal if a question thereto exists." Liberty Mutual Ins. Co. v. Wetzel (1976) 424 U.S. 737, 740. By the C/A refusing to determine its own jurisdiction, it is in violation of this Court's ruling in FW/PBS, Inc. v. Dallas (1990) 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603, 621-22, "The federal courts are under an independent obligation to examine their own jurisdiction.... (citation). '[E]very federal appellate court has a special obligation to "satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review" even though the parties are prepared to concede it. (citations)." It is established that "If the jurisdiction of a federal court is questioned, the court has the power ***and the duty***, subject to review, to determine the jurisdictional issue." [emph. added]. (13A Wright,

Miller & Cooper, Federal Practice & Procedure, Jurisdiction 2d §3536, p.535).

The C/A refused to exercise its duty to examine its own jurisdiction under Title 28 U.S.C. §1291 and Rule 4(a)(1) FRAP, and failed to address the pending Rule 59(e) motions and the Usurpation of Power issue, both of which go to jurisdiction of the federal courts in this action. Usurpation challenges the district court's improper exercise of federal jurisdiction by failing to address the federal question, and it being unresolved, the other issues remain "on hold." The pending Rule 59(e) motions are the means by which that jurisdictional issue was brought in district court as fully set forth in the OB. That issue remains unaddressed to date, and it is inconceivable that a "final decision" required under §1291 exists in this litigation. "[A] district court's decision is appealable under this section only when the decision 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.' Catlin v. United States 324 U.S. 229, 233 (1945)." Gulfstream Aerospace Corp. v. Mayacamas Corp. (1988) 485 U.S. 271, 275.

As this Court has stated, Rule 59(e) FRCvP and Rule 4(a)(4) FRAP implement the finality requirement of §1291: "Rule 4(a)(4) of the Federal Rules of Appellate Procedure provides that a notice of appeal filed while a timely Rule 59(e) motion is pending has no effect. Together, these rules work to implement the finality requirement of 28 U.S.C. §1291 by preventing the filing of an effective notice of appeal until the District Court has had an opportunity to dispose of all motions that seek to amend or alter what otherwise might appear to be a final judgment." Osterneck v. Ernst & Whinney (1989) 489 U.S. 169, 173-4. The District Court herein has had every opportunity to dispose of the 59(e) motions, but has refused.

"In Budinich v. Becton Dickinson & Co. [(1988) 486 U.S. 196] the issue was not whether a particular kind of motion constitutes a Rule 59(e) motion, but rather the related question whether a

judgment is final under 28 U.S.C. §1291...." Osterneck, p.175. "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States (supra) at p.233, cited in Budinich (supra) at p.199. "A question remaining to be decided after an order ending litigation on the merits does not prevent finality *if its resolution will not alter the order or moot or revise decisions embodied in the order.*" [emph. added] Id. p.199. Resolution of Usurpation of Power by the district court *would indeed* "alter the order or moot or revise decisions embodied in the order" and hence, "*does* prevent finality".

"[T]he finality requirement embodied in §1291 is jurisdictional in nature.... A court lacks discretion to consider the merits of a case over which it is without jurisdiction." Firestone Tire & Rubber Co. v. Risjord (1981) 449 U.S. 368, 379. Since none of the decisions of the district court can be deemed "final" under §1291 within the meaning of Budinich (supra), the C/A lacked discretion to consider the merits of the purported appeal, and the decision filed August 6, 1992 is void and a nullity, and is of no force or effect.

As stated by this Court in Osterneck v. Ernst & Whinney (supra), Rule 4(a)(4) FRAP, together with Rule 59(e) FRCivP, are the means by which the finality requirement of §1291 is implemented. Prof. Moore stated "Rule 4(a)(4) is an exception to the general rule that the time for filing a notice of appeal begins to run when the judgment is entered. It provides that, when certain timely post-judgment motions are made, the time for appeal does not begin to run until the district court's entry of an order disposing of the motion." (9 Moore's Fed. Prac. 2d (1992) §204.12[1] p.4-67). "Professor Moore has aptly described the post-1979 effect of a Rule 59 motion on a previously filed notice of appeal: 'The appeal simply self-destructs.' 9 J.Moore, B.Ward, and J.Lucas, Moore's Federal Practice §204.12[1] p.4-65 n.17 (1982). Moreover, a subsequent notice of appeal is also in-

effective if filed while a timely Rule 59 motion is still pending. See 16 C.Wright, A.Miller, E.Cooper, & E. Gressman, Federal Practice & Procedure §3950 (1982 Supp.)" Griggs v. Provident Consumer Discount Co. (1982) 459 U.S. 56, 61, 103 S.Ct. 400, 74 L.Ed.2d 225. The Court further stated, "Under the plain language of the current Rule, a premature notice of appeal 'shall have no effect'; a new notice of appeal 'must be filed.' In short, it is as if no notice of appeal were filed at all. And if no notice of appeal is filed at all, the Court of Appeals lacks jurisdiction to act." Id. p.61.

Following Griggs, the C/A last year ruled "'The requirement of a timely notice of appeal is mandatory and jurisdictional.' (citations). Federal Rule of Appellate Procedure 4(a)(4) states that a notice of appeal filed before the disposition of a timely Rule 59(e) motion 'shall have no effect.' Fed.R.App.P. 4(a)(4); see also Griggs v. Provident Consumer Discount Co., [citing case] (notice of appeal filed while Rule 59(e) motion is pending is 'a nullity')." U.S. ex rel. Pippin v. J.R. Youngdale Const. (9th Cir.1991) 923 F.2d 146, 148. Further, "If any party to the action files a Rule 59(e) motion, the time to file a notice of appeal is tolled for all parties. (citations). A party who files a notice of appeal while a Rule 59(e) motion is pending must file another notice of appeal after the disposition of the motion." Id. pp 148-9.

Specifically regarding the Rule 59(e) motions in plaintiff's case is the following portion from his Reply Brief in Case No. 91-55819 before the C/A:

"Plaintiff has filed three Rule 59(e) motions challenging three void judgments and a void order in this litigation to try to get the district court to exercise the federal-question/civil-rights jurisdiction invoked by plaintiff. The first was *referred to the magistrate* 'for all proceedings' [CR 101] (OB 22:8-9); the second was *ignored altogether*, i.e., taken off calendar and never to be rescheduled [CR 272] (OB 22:9-10; 36:16-18); the third was taken 'under submission' [CR 289] and thereafter

slung out into oblivion (OB 38:2-5)-- all over plaintiff's objections. [continuing]

"A focal point of this appeal is the district court's refusal to hear plaintiff's last two Rule 59(e) motions (OB 10:14-15). That refusal lies at the heart of the usurpation of power by the district court in this litigation. Plaintiff stated that he attempted to stay proceedings in district court by his Petition for Writ of Mandate filed 2/15/91 (Case No. 91-70099, denied 3/13/91) and 'what took place thereafter could not be prevented and is now ripe for review.' (OB 13:21-23). Plaintiff was forced through a suddenly set sham trial without notice or rescheduling the motions to vacate/alter/amend judgments [CR 263, 272, 288]. As a result, everything that took place beyond December 10th is beyond the scope of this appeal. (OB 13:16-21). [continuing]

"Plaintiff has cited Moore's Federal Practice which states that 'any motion made within ten days of entry of judgment which seeks a substantive change in the judgment will be considered a Rule 59(e) motion which suspends the finality of the judgment and tolls the time to appeal.' (OB 24:13-16). The district court's refusal to address the Rule 59(e) motions has the effect of 'forever suspending' the finality of those judgments and order under challenge, and therefore this appeal must be addressed to *the usurpation of power by the district court.* Since Writ of Mandate would not lie, as set forth above, plaintiff is left with presenting these unadjudicated Rule 59(e) motions before this court for original determination on appeal as his only remedy." [RB pp 23-24].

These statements made by plaintiff in the RB show that the appeal was taken under duress and perceived as the "only remedy" available to him after mandamus had already been denied. Also, the fact that plaintiff stated that the "appeal" must be addressed to the "usurpation of power" issue and that he was presenting the "unadjudicated Rule 59(e) motions" to the appellate court for its "original determination" demonstrate that it was

plaintiff's understanding that the Rule 59(e) motions were ***not adjudicated*** in district court.

Since the judgments are "suspended" by the Rule 59(e) motions, they must be re-established on the docket pursuant to Rule 79(a) F.R.Cv.P. As plaintiff stated "the district court's refusal to address the Rule 59(e) motions has the effect of 'forever suspending' the finality of those judgments and order." Unless the contrary affirmatively appears, i.e., unless it can be shown that the finality of those judgments and order was re-established on the docket, only then are the judgments appealable under §1291. "It is soundly stated in Grace v. American Central Ins. Co., 109 U.S. 278, 283, 3 S.Ct. 207, 210, 27 L.Ed 932, 934 (1883) that 'As the jurisdiction of the Circuit Court is limited,... the presumption is that a cause ***is without its jurisdiction unless the contrary affirmatively appears.***' (citations omitted)." [emph. added]. Young Properties Corp. v. United Equity Corp. (9th Cir.1976) 534 F.2d 847, 849-50.

The C/A states in its decision "The court orally rejected these motions at the December 10, 1990 hearing" [Decision p.7]. Even if the C/A intended the use of the term "these motions" to include plaintiff's Rule 59(e) motions, an understanding never held by plaintiff, and which interpretation plaintiff vigorously challenges, nevertheless this Court has already overturned a similar contention by the Ninth Circuit in Acosta v. Louisiana Dept. of H&H Res. (1986) 478 U.S. 251, 106 S.Ct. 2876, 92 L.Ed.2d 192, overruling Calhoun v. United States (9th Cir.1981) 647 F.2d 6, which held "[A] notice of appeal could be given effect as long as it was filed after the trial court's announcement of its ruling." (478 U.S. at 253). In overturning Calhoun, this Court ruled "Unlike the decision of the Ninth Circuit in *Calhoun*, the decision below comports with the plain wording of the Rules. Rule 4(a)(4) specifically states that a notice of appeal, to be effective, must be 'filed within the prescribed time measured from the entry of the order disposing of the motion as provided above'" and

then concluded "it is untenable to read subdivision (a)(4) except as the Fifth Circuit has read it in this case: that is, as establishing the rule that ***a notice of appeal is ineffective unless filed after entry of judgment on a Rule 59 motion*** or any of the other motions to which the subdivision applies." [emph.added] (478 U.S. at 253-254).

Although the C/A did conform to Acosta stating "[N]otice of appeal was premature and hence ineffective because it was filed before entry in the district court docket of the written disposition of the motion...." Hollywood v. City of Santa Maria (9th Cir.1989) 886 F.2d 1228, 1230, it is now flip-flopping to its original 1981 Calhoun position which was overturned as "untenable". In 1989 the Ninth Circuit's adjusted position was "The Supreme Court in Acosta... stated that the time to appeal ran from the date of entry on the docket of the order denying ***the motion to alter or amend judgment.*** [emph. added] (478 U.S. 251, 254, 106 S.Ct. 2876, 2877)." Id. p.1232 n.9. In the case at bar, there are ***no decisions to date*** on the "motion(s) to alter or amend judgment". If ambiguity were to be resolved in favor of finality, then plaintiff has been made the victim of a cunningly-devised hoax, because he never had any knowledge of it.

There can be no room for ambiguity about the fixed timing of the entry of an ***effective judgment*** since it is jurisdictional to the appeal. The First Circuit held that a judgment was not a final appealable order where it was ambiguous. See Alman v. Taunton Sportswear Mfg. Corp. (1st Cir.1988) 857 F.2d 840. Rule 58 FRCvP defines "effectiveness" of a judgment, "Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a)."

Rule 4(a)(4) FRAP is subject to the standards set forth above. It states in part "If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party... (iii) under Rule 59 to alter or amend the judgment... the time for appeal for all parties shall run from

the entry of the order granting or denying... such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above." Facts set forth in the OB and RB, supported by specific references to the record, are ***prima facie*** evidence of the lack of finality of any judgments or orders made in district court.

This Court stated: "The sole purpose of the separate-document requirement, which was added to Rule 58 in 1963, was to clarify when the time for appeal under 28 U.S.C. §2107 begins to run." Bankers Trust Co. v. Mallis 435 U.S. 381 at 384. The Court went on to say at page 386: "In *United States v. Indrelunas* [411 U.S. 216], we recognized that the separate-document rule must be 'mechanically applied' in determining whether an appeal is timely. *Id.*, at 221-222." Footnote 7 then states in part "While our decision in *Indrelunas* is consistent with the result we reach today, the beginning paragraph of *Indrelunas* could be read as holding that a separate judgment must be filed in compliance with Rule 58 before a decision is 'final' for purposes of §1291. ...". The Court then concluded "Technical application of the separate-judgment requirement is necessary in that context to avoid the uncertainties that once plagued the determination of when an appeal must be brought." Bankers (supra) at p.386. The Bankers Court stated that "strict compliance with the separate-judgment requirement" is not determinative "of whether the decision of the District Court was 'final' for purposes of §1291." 435 U.S. at p.385 n.6.

Even if the C/A refuses to acknowledge the existence of the pending Rule 59(e) motions, the ultimate question is whether the decisions "appealed" met the finality requirement of §1291. As long as the Usurpation issue remains undecided, the decisions "appealed" cannot be deemed "final" under §1291.

By proceeding without jurisdiction under §1291, the C/A has deprived plaintiff of liberty and property without due process of law in violation of the Fifth Amendment to the United States Constitution. By avoiding the Usurpation issue and then filing a void decision while lacking all discretion to make it, the C/A has left plaintiff still without a remedy under §1983 after more than five years of spinning wheels.

The relief sought by petitioner remains unaddressed. Petitioner requested *inter alia* a ruling on the constitutionality of the following provisions as applied to him in this litigation: (a) Title 42 U.S.C. §1983; (b) Title 28 U.S.C. §1331; (c) Title 28 U.S.C. §1343(a)(3); (d) Title 28 U.S.C. §636(b)(1); and (e) Rule 72(b) F.R.Cv.P. Those provisions relate to the federal jurisdiction to be followed by the district court in this case, and by the court's failure to do so, the Usurpation issue and constitutional challenges arose. All federal courts have an obligation to address those jurisdictional issues which to date they have failed to do. Ironically, the C/A arbitrarily attacked these constitutional challenges as "frivolous" [Decision p.7] while itself lacking jurisdiction and discretion to do so. Because the C/A has ignored its own jurisdiction to act, and has forged ahead anyway, petitioner now also challenges the constitutionality of Title 28 U.S.C. §1291 and Rule 4(a)(1) of the Federal Rules of Appellate Procedure as applied to him.

Petitioner requests this Court determine the jurisdiction of the Court of Appeals over this case and exercise its supervisory appellate power to make disposition of the case as justice requires. Petitioner also respectfully requests that the lower court be ordered to have a new district judge assigned, in that petitioner is convinced he cannot receive a fair trial from the current judge.

CONCLUSION

Petitioner resubmits this Petition for Writ of Certiorari together with a Petition for Writ of Mandamus concurrently herewith and under separate cover in aid of the appellate jurisdiction of this Court which might otherwise be defeated by the unauthorized action of the court below. (See Ex parte United States (1932) 287 U.S. 241, 246, 53 S.Ct. 129, 77 L.Ed 283).

Petitioner respectfully requests that this Court take whatever action is necessary to allow him a federal remedy under §1983 so that the ***federal violations*** may be redressed in this case according to due process of law. Further, petitioner requests that he be reimbursed attorney's fees for being forced, against his will and over his objections, through a sham trial in an attempt to conjure the appearance of finality of this case when indeed there was no finality, and for all costs of review.

Dated: December 22, 1992
Resubmitted: January 29, 1993

Ronald L. Branson

RONALD L. BRANSON,
Plaintiff/Petitioner

APPENDIX

Contents of Appendix

DECISION OF THE COURT OF APPEALS A-2

ORDERS OF THE TRIAL COURT BEING APPEALED. A-8

ORDER DENYING REHEARING A-13

NOTICE OF APPEAL A-14

PETITION FOR WRIT OF MANDAMUS (Cover pg).. .....A-17

ORDER DENYING PETITION FOR WRIT OF MAND. A-18

FIRST RULE 59(e) MOTION (Face sheet) A-19

REFERRAL OF FIRST RULE 59(e) MOTION TO MAGISTRATE A-20

ORDER DENYING FIRST RULE 59(e) MOTION ON RECOMMENDATION OF MAGISTRATE... .....A-21

APPEAL TAKEN ON DENIAL OF FIRST RULE 59(e) MOTION (Cover pg)... .....A-23

SECOND RULE 59(e) MOTION (Face sheet)...A-24

LAST COURT ORDER RE SECOND R59(e) MOTION. A-26

THIRD RULE 59(e) MOTION (Face sheet).....A-27

LAST COURT ORDER RE THIRD R59(e) MOTION A-28

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS & STATUTES A-30

* * *

DECISION OF THE NINTH CIRCUIT COURT OF APPEALS

FILED
AUG 6 1992
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD L. BRANSON, Plaintiff-Appellant,	) No. 91-55819) D.C. No. CV-87-3003-WDK
v.	)
CITY OF LOS ANGELES; ANTHONY R. STAVROPOULOS, Officer; PATRICK SHANNON, Officer; ROGER FERGUSON, Sgt.; JOSEPH MORGAN, Sgt.; LARRY R. DOLLEY, Det.; COUNTY OF LOS ANGELES; SHERMAN T. BLOCK, Sheriff; JAMES PEREZ; PATRICIA G. SCHWARTZ; CRAIG J. STRAUCH, Defendants-Appellees.	) MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
William D. Keller, District Judge, Presiding

Submitted July 10, 1992**
Pasadena, California

Before: FLETCHER, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

On May 11, 1986, Branson was arrested for attempted burglary of a motor vehicle. He was ultimately charged with two misdemeanors, driving without a license and tampering with a motor

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a) and 9th Cir.R. 34-4.

----------1----------

vehicle. May 8, 1987, Branson commenced this action pursuant to 42 U.S.C. § 1983, suing nearly every person he came into contact with during the state proceedings. In his First Amended Complaint, he raised five causes of action: false arrest, illegal search, excessive force, false imprisonment, and substantive due process. Several of these causes of action went to trial, and the jury found for the defendants.

Branson challenges the jurisdiction of both the state and federal courts. He also appeals several of the district court's pretrial rulings: (1) dismissal of Branson's complaint against Commissioner Schwartz with prejudice based on her judicial immunity; (2) denial of Branson's motion for leave to add new causes of action to his complaint or expand existing ones; and (3) determination that Branson had failed to properly seek review of several of his discovery requests, and denial of his discovery sanctions against the defendants. Finally, Branson objects to three of the district court's determinations on procedural grounds: (1) dismissal of defendant Schwartz; (2) denial of Branson's summary judgment motion against defendants Perez and Block, summary judgment for Perez, and denial of defendants County of Los Angeles and Block's summary judgment; and (3) summary judgment for defendant Strauch.

Branson frivolously claims that the federal district court in which he chose to file his §1983 lawsuit lacked jurisdiction. He argues, incorrectly, that the procedures the district court

----------2----------

employed were improper, but this argument, even were it correct, would not establish any defect in jurisdiction.

Branson also makes a jurisdictional attack on the state proceedings. Although Branson was originally arrested for a felony, he was ultimately charged with only two misdemeanors. Commissioners of municipal courts may conduct arraignments for misdemeanors. Cal. Govt. Code § 72190.1. Therefore, Commissioner Schwartz was empowered to conduct Branson's arraignment.

Branson argues that because he was originally arrested for a felony, he must be prosecuted by a district attorney. A county attorney, authorized only to prosecute misdemeanors, handled his case. See Cal. Govt. Code § 72193. The key fact, however, is that Branson was only prosecuted for misdemeanors. Branson argues that only a district attorney could lower his charge from a felony to a misdemeanor. See Cal. Penal Code § 17(4) (defendant has the right to object to charges being defined as misdemeanors). This putative error, however, has nothing to do with the jurisdiction of the municipal court.

Branson also argues that the district court erroneously dismissed his complaint against Commissioner Schwartz on the grounds of judicial immunity because her actions were in excess of the municipal court's jurisdiction. As explained above, the municipal court had jurisdiction over Branson. Even if it did not, the Commissioner would have judicial immunity. Branson does

not allege that Schwartz' actions were not judicial in nature, and we have held: "A judge is immune from suit under 42 U.S.C. § 1983 for acts in excess of his jurisdiction, so long as the acts themselves were judicial." Rosenthal v. Justices of the S. Ct. of Cal., 910 F.2d 561, 565-66 (9th Cir. 1990), cert. denied, 111 S. Ct. 963 (1991). Only when a judicial act is made in "clear absence of all jurisdiction" is judicial immunity absent. Stump v. Sparkman, 435 U.S. 349, 357 (1978).

Branson objects to the district court's denial of leave to amend his complaint. His proposed Second Amended Complaint contains a new cause of action entitled "False Charging, Issuing, and Filing of Misdemeanor Complaint." The district court permitted Branson to add names to existing causes of action, but did not permit him to allege this entirely new cause of action. The denial of leave to amend is within the district court's discretion. Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986) (en banc). This court has commented:

> Five factors are frequently used to assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether plaintiff has previously amended his complaint.

Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990). As in Allen, the final two factors here are sufficient alone to uphold the district court's exercise of discretion. Branson had already amended his complaint, and even more importantly, Branson's new fifth cause of action does nothing more than expand his Complaint filed three years previously and his First Amended

Complaint filed some year and a half earlier. The district court did not abuse its discretion in denying leave to amend.

The district court referred several matters including Schwartz' motion for dismissal and the parties' summary judgment motions to a United States Magistrate Judge for review and recommendation. Branson claims that the district court failed to review the magistrate's findings de novo as required by 28 U.S.C. § 636(b)(1). The district court, however, stated that it had "made a de novo determination of those portions of the report to which objections have been made." Branson's argument is without factual support in the record. Mathews v. Weber, 423 U.S. 261, 274 (1976) ("We categorically reject the suggestion that

judges will accept, uncritically, recommendations of magistrates.").

Branson argues that the district court erred in its interpretation of Local Rule 7.15.2. This rule establishes the procedures by which the attorneys for both parties should set out a joint stipulation of the remaining discovery issues for the court's review. 1/ Branson claims that the defendants did not cooperate with him in creating this stipulation, but the district

---

1/ 7.15.2 **Moving Papers.** If counsel are unable to settle their differences, they shall formulate a written stipulation specifying separately and with particularity each issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue. The stipulation must be set forth in one document which shall contain all such issues in dispute and the contentions and points and authorities of each party. The stipulation shall not refer the Court to other documents in the file.

court penalized him for failing to comply with Rule 7.15.2 because he did not present all the appropriate documents in his motion for sanctions. He argues that it was the defendants who failed to comply with the rule, and they should be sanctioned pursuant to Local Rule 7.15.4. 2/

While Branson may be correct that the defendants failed to cooperate in creating a Local Rule 7.15.2 stipulation, the district court's response was not an abuse of discretion. It considered that the defendants might not have been cooperative, but stated that Branson could have at least supplied the magistrate with the interrogatories that the defendants had failed to answer. The district court did not abuse its discretion by not sanctioning the defendants for this infraction. Nor did the district court penalize Branson for failing to file the interrogatories along with his motion. The court informed Branson that

he could make his motion again with the attached papers. Further, in a later response to Branson's motion for clarification of the ruling, the district court stated that if the defendants continued to fail to cooperate, Branson should file a "declaration of non-cooperation as well as a document containing Plaintiff's contentions and points and authorities, and sanctions against such

---

2/ 7.15.4 **Cooperation of Counsel---Sanctions.** The failure of any counsel to cooperate in such procedures and attend the meeting of counsel, or provide the moving party the information necessary to prepare the stipulation required by Local Rule 7.15.2 within seven (7) days of the meeting of counsel provided in Local Rule 7.15.1, shall result in the imposition of sanctions, including but not limited to the sanctions provided in Local Rule 27 and F.R.Civ.P. 37.

defendant will in all likelihood be granted." These two orders informed Branson exactly how he could receive judicial review of his discovery requests. There was no abuse of discretion. The district court appears to have taken considerable care to avoid any unfair prejudice to such rights as this apparently vexatious litigant might arguably have had.

Branson's brief tangentially refers to several other arguments, all of which are without merit. Branson's repeated claim that the district court failed to rule on his motions for reconsideration is simply incorrect. The court orally rejected these motions at the December 10, 1990 hearing. Branson's assertion that the Magistrates Act, 42 U.S.C. § 1983, and 28 U.S.C. §§ 1331 and 1343 are unconstitutional as applied to him is frivolous.

AFFIRMED.

ORDERS OF THE TRIAL COURT BEING APPEALED

(First Judgment)

ENTERED
CLERK, U.S. DISTRICT COURT
OCT 31 1988
CENTRAL DISTRICT OF CA
BY DEPUTY

JS-6
F I L E D
OCT 28 1988
CLERK, U.S. DIST. CT.
CENTRAL DISTRICT OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON, Plaintiff, v. CITY OF LOS ANGELES, et al., Defendants.

NO. CV 87-3003-WDK(S)

JUDGMENT

Pursuant to the order of the Court adopting the findings, conclusions and recommendations of the United States Magistrate,

IT IS ORDERED AND ADJUDGED that the complaint is dismissed with prejudice as to Commissioner Patricia G. Schwartz.

The Court declines to certify this judgment for review pursuant to F.R.P.C. [sic] §54(b)

Dated: October 26, 1988.

/s/_____
WILLIAM D. KELLER
United States District Judge

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

L O D G E D
JAN 4 1990
CLERK, U.S. DISTRICT CT.
CENTRAL DISTRICT OF CA
BY DEPUTY

Enter Only
F I L E D
JAN 30 1990
CLERK, U.S. DIST. CT.
CENTRAL DISTRICT OF CA
BY DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
FEB 26 1990
CENTRAL DISTRICT OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No. CV 87-3003-WDK(S)
Plaintiff,)
v.)
CITY OF LOS ANGELES) SECOND JUDGMENT
et al.,)
Defendants.)
_____)

Pursuant to the order of the Court adopting the findings, conclusions and recommendations of the United States Magistrate,

IT IS ORDERED: (1) that summary judgment be entered in favor of Defendant James Perez; (2) that Plaintiff's motion for partial summary judgment against Defendants County of Los Angeles, Sheriff Sherman Block and Deputy James Perez be denied; (3) that the summary judgment motion of Defendants County of Los Angeles and Sherman Block be denied; (4) that a genuine issue of material fact exists as to whether or not the visual body-cavity searches of Plaintiff were made pursuant to County policy and/or the direction or policy of Defendant Block; and (5) that the

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

following described facts are without substantial controversy pursuant to Rule 56(d) of the Federal Rules of Civil Procedure: except for the issue of body-cavity searches as described above, the acts and/or omissions of which Plaintiff complains were not the direct and proximate result of the official act, policy, practice or usage of Defendant County or of Defendant Block, and they were not sanctioned by said Defendants or either of them.
Dated: 1/30/90

/s/_____
WILLIAM D. KELLER
United States District Judge

----------2----------

(Third Judgment)

LODGED
JAN 4 1990
CLERK, U.S.DISTRICT COURT
CENTRAL DIST. OF CA
BY DEPUTY

Enter Only
F I L E D
JAN 30 1990
CLERK, U.S.DIST. CT
CENTRAL DIST. OF CA
BY DEPUTY

ENTERED
CLERK, U.S.DIST. CT
FEB 26 1990
CENTRAL DIST. OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No. CV 87-3003-WDK(S)
Plaintiff,)
v.) THIRD JUDGMENT
CITY OF LOS ANGELES)
et al.,)
Defendants.)
_____)

Pursuant to the order of the Court adopting the findings, conclusions and recommendations of the United States magistrate,

IT IS ORDERED that summary judgment be entered in favor of Defendant Strauch and that Plaintiff's motion for partial summary judgment be denied.

Dated: 1/30/90

/s/_____
WILLIAM D. KELLER
United States District Judge

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FCRP, RULE 77(d)

(Fourth Judgment)
[Sham Trial as Shown By Record]

JS-6

ENTERED
CLERK, U.S.DISTRICT COURT
JUN 18 1991
CENTRAL DIST. OF CA
BY DEPUTY

F I L E D
JUN 14 1991
CLERK,U.S.DIST. CT.
CENTRAL DIST. OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON
Plaintiff

vs

CITY OF LOS ANGELES, et al
Defendant

CASE NO. CV 87-3003-WDK

JUDGMENT ON THE VERDICT
(For Defendant)

This cause having been tried by a Jury, before the Honorable WILLIAM D. KELLER, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its verdict; now therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff(s)

RONALD BRANSON

take nothing on the complaint against the defendant(s)

City of Los Angeles, County of Los Angeles, Officer Anthony R. Stavropoulos, Officer Patrick Shannon, Sgt. Joseph Morgan and Detective Larry Dolley

CLERK
UNITED STATES DISTRICT COURT

Dated: June 14, 1991

By /s/ Sara Tse
Deputy Clerk

JUDGMENT ON THE VERDICT
CV-44 (3/87) (FOR DEFENDANT)

ORDER DENYING REHEARING

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

F I L E D
SEP 28, 1992
CATHY CATTERSON,CLERK
U.S.COURT OF APPEALS

RONALD L. BRANSON Plaintiff-Appellant, v. CITY OF LOS ANGELES; ANTHONY R. STAVROPOULOS, Officer; PATRICK SHANNON, Officer; ROGER FERGUSON Sgt.; JOSEPH MORGAN, Sgt.; LARRY R. DOLLEY, Det.; COUNTY OF LOS ANGELES; SHERMAN T. BLOCK, Sheriff; JAMES PEREZ; PATRICIA G. SCHWARTZ; CRAIG J. STRAUCH, Defendants-Appellees	No. 91-55819 D.C. No.CV-87-3003-WDK ORDER

Before: FLETCHER, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

Appellant's petition for rehearing is DENIED.

NOTICE OF APPEAL
(UCSA No. 91-55819)

Name/Address of Attorney
or Pro Per
RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
Telephone (818)446-8356
Leave message with
Robert Brown

F I L E D
JUL 10 1991
CLERK,U.S.DISTRICT COURT
CENTRAL DIST. OF CALIF
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON
Plaintiff,
vs.
CITY OF LOS ANGELES, et al
Defendant.
(See attached for full
list of defendants)

Case Number
CV 87-03003-WDK

NOTICE OF APPEAL

Notice is hereby given that RONALD L. BRANSON
Name of Appellant
hereby appeals to the United States Court of Appeals for the Ninth Circuit from

CRIMINAL MATTER

[ ]Conviction only (F.R.Cr.P.32(b))
[ ]Conviction and Sentence
[ ]Sentence only (18 U.S.C. 3742)
[ ]Order (specify)
_____
_____
[ ]Sentence Imposed:____
_____
[ ]Bail Status:_____
_____

CIVIL MATTER

[ ]Order (specify)
_____
_____
[x]Judgment (specify)
(1)Judgment
(2)Second Judgment
(3)Third Judgment
(4)Judgment on the Verdict
[ ]Other (specify)
_____

Entered in this action on
(1) Oct.31,1988 (2) Feb.26,1990 (3) Feb.26,1990 (4) Jun.18,1991
Date Judgment or Order Entered on the Docket Sheet

A copy of said judgment or order is attached hereto.

DATED July 10, 1991 /s/RONALD L. BRANSON
Signature of Appellant
or Appellant's Attorney

NOTE: Pursuant to Local Rule 17, the Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of Rule 3(d), F.R.App.

(SEE ATTACHED)

A-2 (04/89) NOTICE OF APPEAL

NOTICE OF APPEAL
(continued)

NAMES OF ALL DEFENDANTS	COUNSEL OF RECORD
CITY OF LOS ANGELES OFFICER ANTHONY R. STAVROPOULOS OFFICER PATRICK SHANNON SGT. ROGER FERGUSON SGT. JOSEPH MORGAN DET. LARRY R. DOLLEY	James K. Hahn L.A. City Attorney 1700 City Hall East 200 No. Main St. Los Angeles CA 90012 Attn:CARMEN HAWKINS
COUNTY OF LOS ANGELES SHERMAN BLOCK JAMES PEREZ PATRICIA G. SCHWARTZ	Morris, Polich & Purdy Attorneys at Law 801 S. Grand, 17th Fl. Los Angeles CA 90017 Attn: ZAHAVA STROUD
CRAIG J. STRAUCH	Dan Lundgren Calif. Attorney Gen. 3580 Wilshire, 8th Fl. Los Angeles CA 90010 Attn: CATHERINE P. BERNSTEIN

7/10/91 RB

PETITION FOR WRIT OF MANDAMUS
(Cover Page)
USCA No. 91-70099

F I L E D
FEB 15 1991
CATHY CATTERSON,CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case No. 91-70099

RONALD L. BRANSON, Petitioner
vs.
UNITED STATES DISTRICT COURT, Respondent

CITY OF LOS ANGELES; COUNTY OF LOS ANGELES; OFFICER ANTHONY R. STAVROPOULOS; OFFICER PATRICK SHANNON; SGT. R.W. FERGUSON; SGT. JOSEPH MORGAN; DET. LARRY R. DOLLEY; CRAIG J. STRAUCH, an individual; SHERMAN BLOCK, Los Angeles County Sheriff; JAMES PEREZ, Deputy Sheriff; and PATRICIA G. SCHWARTZ, Commissioner of the Los Angeles Municipal Court,

Real Parties In Interest

PETITION FOR WRIT OF MANDAMUS

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
(No phone)
Petitioner

SUBMITTED
February 11, 1991

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

F I L E D
MAR 13 1991
CLERK,U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD L. BRANSON, Petitioner, vs. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, Respondent, and CITY OF LOS ANGELES, et al., Real Parties In Interest.	No. 91-70099 DC# CV-87-3003-WDK Central California ORDER

Before: PREGERSON, ALARCON and WIGGINS,
Circuit Judges

The petition for writ of mandamus is denied. Petitioner's motion for stay of proceedings pending disposition of the petition is denied as moot.

MoCal 3/11/91
1

THE FIRST RULE 59(e) MOTION (Face Sheet only)
(Challenging the First Judgment)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

F I L E D
CLERK,U.S.DIST.COURT
NOV 10 1988
CENTRAL DIST. OF CALIF

Plaintiff, Pro Se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON) No. CV 87-03003-WDK(S)
)
) NOTICE OF MOTION AND MOTION
Plaintiff,) TO ALTER OR AMEND JUDGMENT
) AND TO VACATE AND SET ASIDE
) ORDER ADOPTING FINDINGS,
) CONCLUSIONS AND RECOMMEND-
) ATIONS OF UNITED STATES
v.) MAGISTRATE IN A CIVIL RIGHTS
) CASE; MEMORANDUM OF POINTS
) AND AUTHORITIES AND DECLA-
CITY OF LOS) RATION IN SUPPORT THEREOF
ANGELES, et al.,) [Rule 59(e) F.R.Cv.P.]
)
) Date: Dec. 5, 1988
Defendants.) Time: 3:00 p.m.
) Place: Room 1600
_____)

TO THE HONORABLE WILLIAM D. KELLER,
UNITED STATES DISTRICT JUDGE:

PLEASE TAKE NOTICE that on December 5, 1988, at 3:00 p.m. or as soon thereafter as the matter can be heard in the courtroom of U.S. District Judge WILLIAM D. KELLER, located in Courtroom 1600 of the United States Courthouse, 312 North Spring Street, los Angeles, California, plaintiff will move the court for an order altering or amending its Judgment in

----------1----------

REFERRAL OF FIRST RULE 59(e) MOTION TO MAGISTRATE

UNITED STATES GOVERNMENT
MEMORANDUM

Date: November 28, 1988
Reply to Attn of: Sara Wong,
CRD to Judge WILLIAM D. KELLER
Subject: REFERRAL TO MAGISTRATE
To: Liz Padilla, CRD to Magistrate STONE

F I L E D
NOV 28 1988
CLERK,U.S.DIST.COURT
CENTRAL DIST. OF CALIF.

Case No. CV 87-3003-WDK(S)
Title: RONALD L. BRANSON
vs.
CITY OF LOS ANGELES, et al

Pursuant to the Judge's directive, the following matter: Plaintiff's motion to alter or amend judgment and to vacate and set aside order adopting findings, conclusions and recommendations of United States Magistrate in a civil rights case
Filed on November 10, 1988 to be heard on December 5, 1988 is referred to the magistrate for all proceedings.

Counsel for plaintiff
Name Ronald L. Branson
Phone No. NONE

Counsel for defendant:
Name Mary E. House
Phone No. _____

Name_____
Phone No. _____

Name Steven D. Manning
Phone No. _____
Name Scott S. Widitor

Optional Form No. 10
(REV.1-80)
GSA FPMR(41CFR)101.1.6
5010-114

(M-11A) 11/88

REFERRAL TO MAGISTRATE
U.S. Government Printing
Office 1985-461-275/20128

ORDER DENYING THE FIRST RULE 59(e) MOTION ON RECOMMENDATION OF MAGISTRATE

ENTERED
CLERK,U.S.DIST.COURT
FEB 23 1989
CENTRAL DIST.OF CALIF.
BY DEPUTY

F I L E D
FEB 17 1989
CLERK,U.S.DIST.COURT
CENTRAL DIST.OF CALIF.
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No. CV 87-3003-WDK(S)
Plaintiff,)
v.) ORDER DENYING PLAINTIFF'S
CITY OF LOS ANGELES) MOTION; RECOMMENDATION
et al.,) OF UNITED STATES
Defendants.) MAGISTRATE
_____)

On February 16, 1988, Plaintiff filed a first amended complaint for damages under 42 U.S.C. section 1983. One of the named defendants, Patricia G. Schwartz, Commissioner of the Los Angeles Municipal Court, filed a motion to dismiss Plaintiff's amended complaint as to said Defendant. The sole ground for the motion was that Defendant Schwartz was protected by the doctrine of judicial immunity.

On September 13, 1988, the Magistrate filed a Report and Recommendation in which it was recommended that the Court enter judgment dismissing the complaint as to Defendant Schwartz, with prejudice. On September 28, 1988, Plaintiff filed extensive objections to the Report and Recommendation. On October 28,

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

1988, the Magistrate filed a Final Report and Recommendation reaffirming his initial findings and recommendation. On October 28, 1988, the Court filed an order adopting the recommendation of the Magistrate, and a Judgment dismissing Plaintiff's complaint, with prejudice, as to Defendant Schwartz. On November 10, 1988, Plaintiff filed the present motion to alter, amend, or vacate the judgment, and to set aside the order adopting the Magistrate's recommendation.

Having considered the motion filed by Plaintiff, and all papers filed in support thereof, the Court now makes the following order:

IT IS ORDERED that Plaintiff's motion be denied in its entirety.

Dated: 2/17/89

/s/
WILLIAM D. KELLER
United States District Judge

IT IS SO RECOMMENDED
THIS 13TH DAY OF FEBRUARY, 1989:

/s/
ROBERT M. STONE
United States Magistrate

APPEAL TAKEN ON DENIAL OF FIRST RULE 59(e) MOTION (Cover Page only)
USCA No. 89-55309
[Dismissed as Nonappealable - Published Decision]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case No. 89-55306

RONALD L. BRANSON,
Plaintiff and Appellant

vs.

PATRICIA G. SCHWARTZ, Commissioner of the Los Angeles Municipal Court,
Defendant and Appellee.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable WILLIAM D. KELLER, District Judge
No. CV 87-03003-WDK(S)

BRIEF FOR APPELLANT

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
(No phone)

Plaintiff and Appellant
Pro Se

THE SECOND RULE 59(e) MOTION (Face Sheet only)
(Challenging the Second and Third Judgments)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

F I L E D
CLERK,U.S.DIST.COURT
MAR 12 1990
CENTRAL DIST.OF CALIF.

Plaintiff, Pro Se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON) No. CV 87-03003-WDK(S)x
)
) NOTICE OF MOTION AND MOTION
Plaintiff,) TO ALTER OR AMEND, AND
) VACATE AS VOID, "SECOND
) JUDGMENT" AND "THIRD JUDG-
) MENT"; TO VACATE AND SET
) ASIDE THE ORDERS ADOPTING
v.) THE "SECOND" AND "THIRD"
) REPORTS AND RECOMMENDA-
) TIONS OF UNITED STATES
) MAGISTRATE; MEMORANDUM OF
) POINTS & AUTHORITIES AND
CITY OF LOS) DECLARATION IN SUPPORT
ANGELES, et al.,) THEREOF; SPECIFIC REQUEST
) FOR ORAL ARGUMENT BEFORE
) ARTICLE III JUDGE AND FOR
Defendants.) PREPARATION OF WRITTEN
) TRANSCRIPT OF PROCEEDING.
) [Rule 59(e) F.R.Cv.P.]
) Date: April 9, 1990
) Time: 3:00 p.m.
_____) Place: Courtroom 1600

TO THE HONORABLE WILLIAM D. KELLER,
UNITED STATES DISTRICT JUDGE:
[IT IS PRESUMED THAT JUDGE KELLER IS AN ARTICLE III JUDGE; IF NOT, PLAINTIFF RESPECTFULLY REQUESTS THAT THIS MOTION BE HEARD ON ORAL ARGUMENT BEFORE AN ARTICLE III JUDGE]

PLEASE TAKE NOTICE that on April 9, 1990, at 3:00 p.m. or as soon thereafter as the matter can be heard in the courtroom of U.S. District Judge WILLIAM D. KELLER, Located in Courtroom

---1---

* * *

THE LAST ORDER OF THE COURT REGARDING
THE SECOND RULE 59(e) MOTION
[The motion was never rescheduled]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 87-3003-WDK Date April 3, 1990
Title RONALD L. BRANSON v. CITY OF LOS ANGELES et al.
DOCKET ENTRY

PRESENT:
HON. WILLIAM D. KELLER, JUDGE

Sara Tse	None Present
Deputy Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None Present	None Present

PROCEEDINGS: Plaintiff's motion to vacate the Court's Order Adopting the Magistrate's report and recommendation re second and third judgment, presently set for hearing on April 9, 1990, is continued. The parties are hereby ORDERED to appear for a status conference before Judge Keller, Courtroom 1600, on May 7, 1990 at 4:00 p.m. All parties are also ORDERED to meet and draft a brief joint status report to be filed no later than April 20, 1990. Plaintiff's motions will be rescheduled by the Court after the status conference.
IT IS SO ORDERED.

cc: Ronald Branson
Zahava Stroud
Carmen Hawkins
Catherine Bernstein

Initials of
Deputy Clerk S.T.

MINUTES FORM 11
CIVIL-GEN D - M

THE THIRD RULE 59(e) MOTION (Face Sheet only)
(Challenging the Order of 6/22/90)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

Plaintiff, Pro Se

F I L E D
CLERK,U.S.DIST.COURT
JUL 9 1990
CENTRAL DIST.OF CALIF.
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON) No. CV 87-03003-WDK(S)x
)
) NOTICE OF MOTION AND MOTION
Plaintiff,) TO ALTER OR AMEND, AND VACATE
) AS VOID, ORDER DATED JUNE 22 ,
) 1990 AFFECTING LEAVE TO
) AMEND THE FIRST AMENDED
) COMPLAINT; REQUEST TO CON-
vs.) SOLIDATE THIS MOTION WITH
) PREVIOUS MOTION TO ALTER OR
) AMEND FILED MARCH 12, 1990
) AND STILL PENDING HEARING;
) MEMORANDUM OF POINTS AND
CITY OF LOS) AUTHORITIES AND DECLARA-
ANGELES, et al.,) TION IN SUPPORT THEREOF.
) [Rule 59(e) F.R.Civ.P.]
) Date: August 6, 1990
Defendants.) Time: 3:00 p.m.
) Place: Courtroom 1600

TO THE HONORABLE WILLIAM D. KELLER,
UNITED STATES DISTRICT JUDGE:

[PLAINTIFF RESPECTFULLY REQUESTS THAT THIS MOTION, TOGETHER WITH HIS PREVIOUS MOTION FILED MARCH 12, 1990, AND STILL PENDING HEARING, BE HEARD ON ORAL ARGUMENT, WITH WRITTEN TRANSCRIPTION OF PROCEEDINGS BEFORE AN ARTICLE III JUDGE].

THE LAST ORDER OF THE COURT REGARDING
THE THIRD RULE 59(e) MOTION
[The motion is still pending]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 87-3003-WDK Date 7-31-90
Title RONALD L. BRANSON v. CITY OF LOS ANGELES et al.
DOCKET ENTRY

PRESENT:
HON. WILLIAM D. KELLER, JUDGE

Sara Tse	None Present
Deputy Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS: (In Chambers): ORDER TAKING MATTER UNDER SUBMISSION WITHOUT ORAL ARGUMENT.

ON THE COURT'S OWN MOTION, IT IS ORDERED that plaintiff's motion to alter or amend & vacate Order dated 6-22-90, etc. noticed for hearing on 8-6-90, will be taken under submission on that date. No appearance by counsel shall be necessary on that date and the Court will then issue its ruling which will be mailed to counsel when the matter has been decided.

The Clerk shall mail a copy of this Order to counsel.

cc: Ronald Branson
Carmen Hawkins
Zahava Stroud
Catherine Bernstein

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST-CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS ON RECORD IN THIS ACTION ON THIS DATE
DATED 8-1-90
S.T.
DEPUTY CLERK
Initials of Deputy Clerk S.T.

MINUTES FORM 11
CIVIL-GEN

D - M

* * *

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS & STATUTES

U.S. Constitution:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment: No person shall ... be deprived of life, liberty, or property, without due process of law; ...

Fourteenth Amendment: ...[N]or shall any state deprive any person of life, liberty, or property, without due process of law; ...

Federal Statutes:

Title 28 U.S.C. §636(b)(1) (pertinent part): ...A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. ...

Title 28 U.S.C. §1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Title 28 U.S.C. §1291 (pertinent part): The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ... except where a direct review may be had in the Supreme Court. ...

Title 28 U.S.C. §1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28 U.S.C. §1343(a)(3): (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; ...

Title 28 U.S.C. §1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Title 28 U.S.C. §2106: The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Title 28 U.S.C. §2107 (pertinent part): Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after entry of such judgment, order or decree. ...

Title 28 U.S.C. §2403(a): In any action, suit or proceeding in a court of the United States to which the United States of any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States

shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Title 42 U.S.C. §1983 (pertinent part): Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress....

* * *